IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 302 OF 1998

Smt. Krishnabai Damu Mhatre
& ors. ..Appellants

versus

Rajeshkumar Gaitriprasad Pande
& ors. ..Respondents

Mr. Ambar Joshi i/b. S. M. Oka for the Appellants.
None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 1ST MARCH,2005

ORAL ORDER :

1. Heard counsel for the Appellants. Respondents are served. Appeal against Respondent No.1 is dismissed as per Registrar's order on 11.7.2000 and against Respondent Nos. 2 and 4 dismissed as per Registrar's order on 29.10.1999.

2. Counsel for the Appellants contended that the Order of the MACT Raigad at Alibag dated 16.12.1996 was wrong to the extent of exonerating the Insurance Company Respondent No.5 in this appeal. He drew my attention therefore to paragraph

12 of the judgment, which is the basis for exonerating the insurance company. It was the case of the claimants on whose behalf witness Atmaram was examined that they were going to Panvel to purchase vegetables and they had hired the truck. There were three persons who had hired the truck, one of them is the witness Atmaram, the deceased Damu @ Damu Naga Mhatre and one Patel. They paid Rs.600/- to the truck driver, each contributed Rs.200/-, their empty bags were in the truck and when the truck came near Panvel it dashed against the stationary tanker. It was morning time of 5.30 a.m. and the driver could not see the stationary tanker and dashed from behind. No one else was examined on behalf of the owner of the truck or the driver of the truck. The Insurance Company examined only one witness to tender the policy on record. This witness therefore is the only solitary witness to depose about the manner in which accident took place. He was cross examined on behalf of Insurance Company. One suggestion was given to the witness to the fact that the truck was already loaded and came from Thane side, that suggestion was flatly rejected by the witness Atmaram. The Tribunal in paragraph 12 of the judgment came to the conclusion that the truck was already loaded.

3. With the assistance of the Counsel for the

Appellants, I examined the entire record and proceedings including the panchnama of the scene of offence and other documents, viz. FIR etc. but there is absolutely nothing to hold or come to the conclusion that the truck was loaded at the time as suggested to witness Atmaram by the Advocate for the Insurance company. How the Tribunal came to that conclusion is a question but the fact remains that the evidence and documents on record, do not support this finding.

4. The Tribunal therefore found that the story given by Atmaram that he along with deceased and one Patel were going to purchase vegetables from Panvel Market to sell in Turbe Market and Taloja and the Tribunal found the story was not believable because if the truck was loaded then these persons could not have hired the loaded truck. However, this assumption of the Tribunal is without any basis and therefore subsequent conclusion is obviously wrong and contrary to the record. They were therefore the persons going in the truck to accompany the baggage i.e. vegetables they were going to purchase from Panvel Market. The Tribunal relied upon the judgment reported in 1989 ACJ 547 MP, Kallu Maharaj vs. Meenabai, where the insurance company was exonerated from paying compensation on the ground that the truck hired was found used before loading

of the goods. Since in the present case there is no evidence to suggest that the truck was loaded, the aforesaid judgment is of no use and the findings of the Tribunal are liable to be quashed and set aside. Cross examination of Atmaram on behalf of the insurance company has not resulted in nullifying his evidence. Secondly, witness examined on behalf of the insurance company has accepted in his cross examination that Rs.200/- were accepted as premium for four non fare passengers. The Tribunal held that if Atmaram, Damu or Patel had paid Rs.200/- each to the driver, then they were fare paid passengers and therefore the insurance cover did not apply to that. Even this finding of the Tribunal is not proper. It is true that witness Atmaram has said that when they hired the truck from Taloja they paid Rs.600/- for brining the vegetables in the truck. There is nothing on record to show that they had paid any special or specific charge to the driver for carrying them to Panvel. If at all the insurance company wanted to prove that the passengers were fare paid passengers, then in the cross examination of Atmaram, something should have been brought on record in that regard. However there is absolutely nothing from which it can be inferred that the deceased Damu, Atmaram and Patel had paid charges for carrying them to Panvel. What Atmaram had said that these charges were paid for

hiring the truck i.e. for going to Panvel and coming back to Taloja with vegetables. The finding of the Tribunal in that regard cannot be sustained.

5. The aforesaid two submissions were the only submissions made by the counsel for the Appellants and therefore nothing more is required to be decided by this court. Consequently, I pass the following order:

ORDER

. Appeal is partly allowed.

. Order of the Tribunal exonerating the insurance company respondent no.5 is set aside. Claim petition will stand therefore allowed against Original Opponent Nos. 3 and 4 and now in addition against Respondent No.5. No order as to costs as nobody is present for the respondents.

1.03.2005 (D.G. DESHPANDE, J.)